

FILED

FEB 25 2016

Clerk, U.S. Courts
District Of Montana
Missoula Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

STEVE KELLY,

Plaintiff,

vs.

OPPORTUNITY BANK, INC., and
APRIL MARSH,

Defendants.

CV 15-109-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations in this matter on January 12, 2016, recommending dismissal of Plaintiff Steve Kelly's ("Kelly") Complaint. Kelly failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no

clear error in Judge Johnston's conclusion that Kelly's Complaint should be dismissed because it fails to name a government entity and, as a result, the Court lacks subject matter jurisdiction. Further, the Court agrees that Kelly's Complaint fails to state a claim for relief and cannot be cured by amendment. Kelly simply cannot bring forth facts supporting a cause of action for privacy violations.

Additionally, following the issuance of Judge Johnston's Findings and Recommendations, Defendants moved to dismiss Kelly's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(4), (5), and (6). Because the Court will adopt the recommendation to dismiss this case with prejudice, the Court will deny this motion as moot.

IT IS ORDERED that:

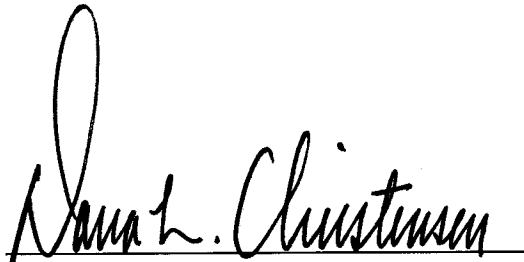
(1) Judge Johnston's Findings and Recommendations (Doc. 5) are ADOPTED IN FULL.

(2) Plaintiff Steve Kelly's Complaint (Doc. 2) is DISMISSED with prejudice. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

(3) The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

(4) Defendants' Motion to Dismiss (Doc. 6) is DENIED as moot.

Dated this 24th day of February, 2016.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court